

U.S. DISTRICT COURT  
N.D. OF N.Y.  
FILED  
JUN 17 2013  
LAWRENCE K. BAERMAN, CLERK  
ALBANY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

\_\_\_\_\_  
WILLIAM McKETHAN,

*Plaintiff,*

-against-

P. FALESKI, et al.,

\_\_\_\_\_  
*Defendants.*

**STIPULATION AND  
ORDER OF  
DISCONTINUANCE  
PURSUANT TO RULE  
41(A)**

10-CV-334

(LEK) (RFT)

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned, the attorneys for plaintiff and Defendants Paul Faleski, Jeremy Osterhoudt, Thomas Farrell, Peter J. Healy, Frederick Butler, Craig Tuero and William Green, parties to the above entitled-action, that, whereas no party hereto is an infant or incompetent person for whom a committee has been appointed, and no person not a party has an interest in the subject matter of the action, the above-entitled action be and the same hereby is settled on the particular circumstances of this case, on the following terms and conditions, which it is agreed are of and shall have no legal precedential value in any other case either between the parties to this case or any other parties:

1. Plaintiff discontinues this action with prejudice and without damages, costs, interest or attorneys fees, and discharges and releases Defendants Faleski, Osterhoudt, Farrell, Healy, Butler, Tuero and Green and the State of New York, including its agencies, subdivisions, employees, private contractors or assignees, of any and all claims, demands, or causes of actions, known or unknown, now existing or hereafter arising, whether presently asserted or not, which relate in any way to the subject matter of this action, and further agrees to discontinue and/or not to commence or to pursue

in any court, arbitration or administrative proceeding, any litigation or claims against the defendants and others released hereby pertaining to the underlying facts, circumstances or incidents that gave rise to the aforementioned action, or any results of the aforementioned facts, circumstances or incidents.

2. Defendants discharge and release plaintiff from any and all claims, demands, or causes of actions, known or unknown, now existing or hereafter arising, whether presently asserted or not, which relate in any way to the subject matter of this action.

3. This action is hereby discontinued with prejudice pursuant to Rule 41(a) of the Federal Rules of Civil Procedure.

4. The parties agree that no provision of this settlement shall be interpreted to be an acknowledgment of the validity of any of the allegations or claims that have been made in the action.

5. This settlement does not constitute a determination of, or admission by any party to any underlying allegations, facts or merits of their respective positions. The settlement of this action is limited to the circumstances in this case alone and shall not be given effect beyond the specific provisions stipulated to. This settlement does not form and shall not be claimed as any precedent for, or an agreement by the parties to any generally applicable policy or procedure in the future.

6. Following the execution of this stipulation, and its being ordered by the Court, Defendants Faleski, Osterhoudt, Farrell, Healy, Butler, Tuero and Green shall pay to plaintiff the sum of Five Thousand Dollars (\$5,000.00) in full settlement of any and all claims. Payment by Defendants Faleski, Osterhoudt, Farrell, Healy, Butler, Tuero and Green of this amount shall be made payable to plaintiff in the amount of \$5,000.00. This amount includes all sums to which plaintiff is entitled, including but not limited to damages, costs, and attorney's fees. Plaintiff's

check will be mailed to Inmate Account for William McKethan, 93-A-6107, Cayuga Correctional Facility, P.O. Box 1186, Moravia, New York 13118.

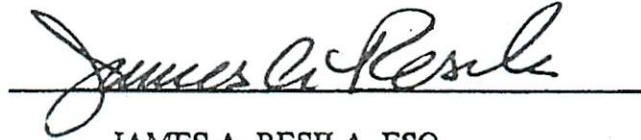
7. Payment by Defendants Faleski, Osterhoudt, Farrell, Healy, Butler, Tuero and Green of the amount specified in paragraph 6 is conditioned on the approval of all appropriate state officials in accordance with the provisions for indemnification under section 17 of the New York Public Officers Law.

8. Payment of the amounts referenced in paragraph 6 will be made within one hundred and twenty (120) days after the approval of this stipulation by the Court and receipt by Defendants Faleski, Osterhoudt, Farrell, Healy, Butler, Tuero and Green 's counsel of a copy of the so-ordered stipulation.

9. In the event that the terms of paragraph 7 are satisfied, but payment is not made within the 120 day period set forth in paragraph 6, interest shall begin to accrue on the outstanding principal balance at the statutory rate on the one hundred and twenty-first day after court approval.

10. The foregoing constitutes the entire agreement of the parties.

Dated: Albany, New York  
June 12, 2013



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*Bar Roll No. 102434*

Dated: Albany, New York  
May 31, 2013


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Dated: Albany, New York  
June 17, 2013

SO ORDERED:



HON. LAWRENCE E. KAHN  
UNITED STATES DISTRICT COURT SENIOR JUDGE